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HOUSE BILL 772

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO TAX FRAUD; PROVIDING A CRIMINAL PENALTY FOR  
ENGAGING IN ACTIONS TO OBSTRUCT STATE TAX-RELATED  
INVESTIGATIONS BY CRIMINAL INVESTIGATORS OR INVESTIGATIONS BY  
PERSONS AUTHORIZED PURSUANT TO THE TAX ADMINISTRATION ACT TO  
INVESTIGATE VIOLATIONS OF THAT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tax Administration Act,  
Section 7-1-18.1 NMSA 1978, is enacted to read:

"7-1-18.1. [NEW MATERIAL] TOLLING OF TIME LIMITATIONS  
UPON ACTION TO QUASH A SUBPOENA OR SUMMONS.--The running of the  
period of limitations pursuant to Section 7-1-18 or 7-1-19 NMSA  
1978 with respect to a tax liability under investigation shall  
be suspended for the period during which a proceeding and  
related appeals regarding the enforcement of a subpoena or

.165012.1

underscoring material = new  
[bracketed material] = delete

underscoring material = new  
[bracketed material] = delete

1 summons is pending, if a person, the extent of the tax  
2 liability of which is being established, or that person's  
3 agent, nominee or other person acting under the direction or  
4 control of the person for which the tax liability is being  
5 established, files an action with the court to quash a subpoena  
6 or summons issued by:

7 A. an administrative agency with the power to issue  
8 an administrative subpoena or summons for investigative  
9 purposes; or

10 B. a grand jury."

11 Section 2. A new section of the Tax Administration Act,  
12 Section 7-1-73.1 NMSA 1978, is enacted to read:

13 "7-1-73.1. [NEW MATERIAL] OBSTRUCTION OF A TAX-RELATED  
14 INVESTIGATION.--

15 A. Obstruction of a tax-related investigation  
16 consists of:

17 (1) knowingly providing false information to  
18 or knowingly withholding information from a person authorized  
19 to investigate violations of the Tax Administration Act or to  
20 enforce the remedies of that act, where that information is  
21 material to the investigation or enforcement;

22 (2) knowingly altering, destroying, mutilating  
23 or concealing a document or record required to be retained  
24 pursuant to the Tax Administration Act or a regulation issued  
25 by the department when the alteration, destruction, mutilation

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[bracketed material] = delete

1 or concealment is intended to mislead an investigation by a  
2 criminal investigator or a person authorized to investigate or  
3 enforce the remedies of the Tax Administration Act and concerns  
4 information material to that investigation; or

5 (3) knowingly preventing, obstructing,  
6 delaying or attempting to prevent, obstruct or delay the  
7 communication of information or records relating to a state  
8 tax-related investigation or providing or attempting to provide  
9 misleading information or records to a criminal investigator or  
10 person authorized to investigate or enforce the remedies of the  
11 Tax Administration Act.

12 B. Whoever commits obstruction of a tax-related  
13 investigation is guilty of a misdemeanor and upon conviction  
14 shall be sentenced pursuant to the provisions of Section  
15 31-19-1 NMSA 1978."

16 Section 3. Section 30-1-9 NMSA 1978 (being Laws 1963,  
17 Chapter 303, Section 1-9) is amended to read:

18 "30-1-9. TOLLING OF TIME LIMITATION FOR PROSECUTION FOR  
19 CRIMES.--

20 A. If after any crime has been committed the  
21 defendant [~~shall conceal himself~~] conceals the defendant's  
22 person or identity, or [~~shall flee~~] flees from or [~~go~~] goes out  
23 of the state, the prosecution for [~~such~~] the crime may be  
24 commenced within the time prescribed in Section [~~1-8~~] 30-1-8  
25 NMSA 1978 after the [~~defendant ceases to conceal himself or~~]

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[bracketed material] = delete

1 defendant's person or identity is discovered or the defendant  
2 returns to the state. No period shall be included in the time  
3 of limitation when the party charged with ~~[any]~~ a crime is not  
4 usually and publicly a resident within the state.

5 B. When ~~[(1)]~~ an indictment, information or  
6 complaint is lost, mislaid or destroyed; ~~[(2)]~~ the judgment is  
7 arrested; ~~[(3)]~~ the indictment, information or complaint is  
8 quashed for any defect or reason; or ~~[(4)]~~ the prosecution is  
9 dismissed because of variance between the allegations of the  
10 indictment, information or complaint and the evidence; and a  
11 new indictment, information or complaint is ~~[thereafter]~~  
12 presented, the time elapsing between the preferring of the  
13 first indictment, information or complaint and the subsequent  
14 indictment, information or complaint shall not be included in  
15 computing the period limited for the prosecution of the crime  
16 last charged; provided that the crime last charged is based  
17 upon and grows out of the same transaction upon which the  
18 original indictment, information or complaint was founded, and  
19 the subsequent indictment, information or complaint is brought  
20 within five years from the date of the alleged commission of  
21 the original crime.

22 C. The running of the period of limitations  
23 pursuant to Section 30-1-8 NMSA 1978 with respect to a tax  
24 liability under investigation shall be suspended for the period  
25 during which a proceeding and related appeals regarding the

.165012.1

underscoring material = new  
[bracketed material] = delete

1 enforcement of a subpoena or summons is pending, if a person,  
2 the extent of the tax liability of which is being established,  
3 or that person's agent, nominee or other person acting under  
4 the direction or control of the person for which the tax  
5 liability is being established, files an action with the court  
6 to quash a subpoena or summons issued by:

7 (1) an administrative agency with the power to  
8 issue an administrative subpoena or summons for investigative  
9 purposes; or

10 (2) a grand jury."

11 Section 4. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2007.

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